

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES

401 WATER QUALITY CERTIFICATION
REGULATIONS

MARCH 6, 1995

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Adopt Parts Env-Ws 451 through Env-Ws 455

PART Env-Ws 451 WATER QUALITY CERTIFICATION

Env-Ws 451.01 Purpose. The purpose of the rules in Env-Ws 451 through Env-Ws 455 is to set forth the procedures for issuance of state certification pursuant to section 401 of the federal clean water act (CWA).

Env-Ws 451.02 Applicability. The rules in Env-Ws 451 through Env-Ws 455 shall apply to persons seeking a federal permit or license which may result in a discharge to surface waters of the state under Section 401 of the CWA. These rules shall not apply to the certification of National Pollutant Discharge Elimination System permits.

PART Env-Ws 451 DEFINITIONS

Env-Ws 452.01 “Applicant” means any person who applies for a section 401 water quality certification under these rules.

Env-Ws 452.02 “Discharge” means any addition of pollutants to the surface waters of the state, or release of water which alters the physical, chemical or biological condition of surface waters of the state.

Env-Ws 452.03 “Division” means the division of water supply and pollution control, department of environmental services.

Env-Ws 452.04 “Licensing or permitting agency” means an agency of the federal government to which application is made for any license or permit to conduct any activity which may result in any discharge into surface waters of the state.

Env-Ws 452.05 “Pollutant” means any.

- a) Dredge material;
- b) Solid waste;
- c) Incinerator residue;
- d) Sewage;
- e) Garbage;
- f) Refuse;
- g) Oil;
- h) Sewage sludge;
- i) Munitions;
- j) Hazardous waste or substances;
- k) Heat;
- l) Wrecked or discarded equipment;

- m) Rock;
- n) Sand; or
- o) Industrial, municipal or agricultural waste.

Env-Ws 452.06 “Responsible official of a government agency” means:

- a) The individual in charge of the agency; or
- b) Such person who has statutory authority sign a section 401 application; or
- c) The individual to whom the person identified in (a) or (b) above has delegated the authority to sign, if the law allows for such delegation.

Env-Ws 452.07 “Section 401 Certificate” or “401 Certificate” means the certificate required under section 401 of the clean water act.

Env-Ws 452.08 “State” means the state of New Hampshire.

Env-Ws 452.09 “Surface waters of the state” means “surface waters of the state” as defined in RSA 485-A:2, XIV, namely “streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or artificial.”

PART Env-Ws 453 CERTIFICATION REQUIREMENTS

Env-Ws 453.01 Certification Required.

- a) Under section 401 of the CWA, a water quality certificate shall be obtained by any applicant for a federal permit or license to conduct any activity which may result in any discharge to surface waters of the state.
- b) For any project that is authorized for inclusion under the New Hampshire State programmatic general permit (“NHSPGP”) by the Army Corps of Engineers, the section 401 certificate shall be deemed to be part of the NHSPGP.

Env-Ws 453.02 Recertification. A new or modified section 401 certificate shall be required for any modification of a federal permit or of an existing certified project that may result in an increased discharge to surface waters of the state, or a change in the quality of the discharge.

PART Env-Ws 454 APPLICATION PROCEDURES

Env-Ws 454.01 Application for 401 Certificate.

- a) Application for 401 certification shall be made to:

NHDES Water Supply and Pollution Control Division

6 Hazen Drive – PO Box 95
Concord, New Hampshire 03302-0095

- b) The applicant shall provide the following;
- 1) The date of application;
 - 2) The name, address, phone number and the principal place of business of the applicant;
 - 3) The name of the individual who shall be primarily responsible for the conduct of the activity for which certification is sought, such as the president or owner of the organization;
 - 4) The nature of the activity to be conducted by the applicant;
 - 5) Whether the discharge is occurring or proposed;
 - 6) The location of the discharge noted on a united state geological survey quadrangle map;
 - 7) The latitude/longitude of the discharge, if applicable;
 - 8) The county;
 - 9) The drainage basin; and
 - 10) The name of the receiving water;
 - 11) The type of discharge, including chemical composition, quantity in cubic feet per second, frequency, and temperature;
 - 12) When project construction is to be initiated;
 - 13) Estimated project construction and operation period;
 - 14) A plan showing the proposed project to scale including;
 - i. Project boundaries;
 - ii. Location, dimensions and types of any existing and/or a proposed structures; and
 - iii. The location and extent of waterbodies including wetlands;
 - 15) Name and addresses of adjoining riparian or littoral owners;
 - 16) A copy of the complete federal permit application;
 - 17) A copy of the wetlands permit, and RSA 485-A:17 permit, if applicable, and any other state permits and applications required by law; and
 - 18) Signature of the president, owner or chief executive officer of a company, or a responsible official of a governmental agency certifying that all information contained in the application is true and correct to the best of his/her knowledge and belief.
- c) Application forms shall be available at the division during normal business hours from 8:00 a.m to 4:00 p.m.

Env-Ws 454.02 Application Review Process

- a) Applications submitted without all required application information or signature(s) shall not be accepted for processing.

b) If the information supplied by the applicant raises questions relative to the adequacy of protection of the environment, public health, or the state's surface waters the director shall require such other information necessary to ensure compliance with these rules and to protect the public health and safety of the environment.

c) The division shall send written notice of its decision to the applicant and to the municipality in which the activity is located or is proposed to be located, and to the appropriate federal licensing or permitting agencies.

d) If certification is denied, the decision shall include a statement of the specific reasons for the denial and shall inform the applicant that the decision may be appealed to the water supply and pollution control council, in accordance with Env-WC 200, Procedural Rules.

Env-Ws454.03 Notice by Publication.

a) The applicant shall make newspaper notice pursuant to Env-Ws 454.04(b) of a pending permit application within 30 days after receiving notice from the division that all information and signatures required by Env 454.01(b) have been submitted. The cost of the public notice shall be borne by the applicant unless the applicant is a political subdivision and local legislative body votes to not pay for the publication, in which case the division shall bear the cost of the public notice.

b) The public notice shall include the following:

- 1) Name and address of applicant;
- 2) The action requested in the application;
- 3) A brief description of the project, including the nature and location of the discharge;
- 4) The date of final action proposed to be taken by the division upon the application;
- 5) A statement that the application information is on file with the division and may be reviewed during normal working hours; and
- 6) The name and phone number of the division contact person.

d) Public notice shall not be required if the federal licensing or permitting agency or the NH wetlands board has provided public notice of the proposed action.

Env-Ws 454.04 Public Information Meeting.

a) The division shall schedule a public meeting, if requested within 20 days of publication of the notice.

b) Notice of the public meeting shall be published one time in a newspaper having general circulation in the county in which the discharge will occur. The notice

shall be published at least 5 days prior to the date of the public meeting. The notice shall state this time, place and nature of the public meeting.

PART Env-Ws 455 CERTIFICATION

Env-Ws 455.01 Modification or Revocation of Certification.

a) Any certification issued pursuant to this rule shall be revoked or modified, as provided in (c) or (d) below, for violations of conditions of section 401 CWA, or violations of any condition pursuant to this certification.

b) In proceeding to revoke or modify a certification, the division shall proceed in accordance with RSA 541-A:30 and Env-C 200.

c) Any certification issued pursuant to this rule shall be revoked upon a determination that information contained in the application or presented in support thereof is incorrect, and that the true information, if presented, would not have resulted in a certification being issued.

d) Any certification issued pursuant to this rule shall be modified if the division determines that:

- 1) That information was accurate when submitted but no longer reflects current conditions; or
- 2) The information was not accurate when submitted; and
- 3) The true information, if presented, would still have resulted in a certification being issued but with terms or conditions not reflected in the existing certification.

Env-Ws 455.02 Approval Criteria.

A water quality certificate shall be issued if the application and all supporting documents meet the following condition:

- a) All requirements of parts Env-Ws 454 and Env-Ws 455 have been met;
- b) All state and/or federal permits necessary for the construction and operation of the project have been obtained or shall be issued upon approval of the application by the division; and
- c) Construction or operation of the project will not violate state surface water quality standards.

Env-Ws 455.03 Duration.

Section 401 certificates issued pursuant to these rules shall be valid for 6 years from the date of issuance.

Env-Ws 455.04 Reapplication.

Reapplication for section 401 certificates shall be made at least 180 days prior to expiration of existing 401 certificate.